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ROBYN HELD

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

WELLNESS SUPPORT NETWORK, INC., a
corporation,

ROBERT HELD, individually and as an officer
of Wellness Support Network, Inc., and

ROBYN HELD, individually and as an officer
of Wellness Support Network, Inc.,
Defendants.

Case No. 3:10-cv-4879 JCS

**JOINT STATEMENT OF UNDISPUTED
MATERIAL FACTS**

Hearing Date: February 14, 2014

Hearing Time: 9:30 a.m.

Location: Courtroom G, 15th Floor

FACT #	UNDISPUTED FACT	CITATION
1	Defendants Wellness Support Network (WSN), Robert Held, and Robyn Held have advertised and sold their products in the County of San Francisco, California.	Amended Answer and Affirmative Defenses Filed by Defendants Wellness Support Network, Inc., Robert Held and Robyn Held ("Amended Answer"), ¶ 4
2	Defendant WSN is a closely held California corporation with its principal place of business at 620 N. Brand Blvd., Ste. 400, Glendale, California, 91203.	Amended Answer, ¶ 6
3	Defendant WSN transacts, or has transacted, business in the Northern District of California and throughout the United States.	Amended Answer, ¶ 6
4	Defendant Robert Held is, or at times material to the FTC's Complaint has been, the President, a Director, and an owner of WSN.	Amended Answer, ¶ 7
5	THIS NUMBER INTENTIONALLY NOT USED	-----
6	Among other things, in conjunction with Defendant Robyn Held, Defendant Robert Held develops all advertising and marketing for WSN products, including the Diabetic Pack and the Insulin Resistance Pack.	Amended Answer, ¶ 7
7	In conjunction with Defendant Robyn Held, Defendant Robert Held also created the website through which WSN advertises the Diabetic Pack and the Insulin Resistance Pack.	Amended Answer, ¶ 7
8	Robert Held transacts, or has transacted, business in this District and throughout the United States.	Amended Answer, ¶ 7
9	Defendant Robyn Held is, or at times material to the FTC's Complaint has been, the Secretary, Chief Financial Officer, a Director, and an owner of WSN.	Amended Answer, ¶ 8
10	THIS NUMBER INTENTIONALLY NOT USED	-----
11	THIS NUMBER INTENTIONALLY NOT USED	-----
12	In conjunction with Defendant Robert Held, Defendant Robyn Held also created the website through which WSN advertises the Diabetic Pack and the Insulin Resistance Pack.	Amended Answer, ¶ 8
13	Robyn Held transacts, or has transacted, business in this District and throughout the United States.	Amended Answer, ¶ 8
14	The WSN Glucose Support Formula contains a variety of dietary ingredients, including Vitamin A, Vitamin D, biotin, chromium, vanadium, and banaba leaf extract.	Amended Answer, ¶ 12

1	15	The WSN Calcium-Magnesium Formula contains Vitamin D, calcium, magnesium, and other ingredients.	Amended Answer, ¶ 13
2			
3	16	The WSN Vitamin & Mineral Formula contains a variety of vitamins, minerals and other ingredients.	Amended Answer, ¶14
4	17	Robert Held helped bring WSN into existence.	Robert Held Depo., (Jan. 29, 2013), 7:21-8:5
5	18	The first product WSN sold was the Diabetic Pack.	Robert Held Depo., 13:8-14
6	19	The only two officers of WSN as of January 29, 2013, are Robert Held and Robyn Held.	Robert Held Depo., 19:1-5
7			
8	20	Robyn Held runs the day-to-day operations of WSN as Chief Operating Officer and Chief Financial Officer.	Robert Held Depo., 21:18-22:3
9	21	Robyn Held supervises all departments at WSN as of January 29, 2013.	Robert Held Depo, 22:25-23:2
10	22	At times, Robert Held and Robyn Held supervise one another at WSN.	Robert Held Depo., 23:3-24
11	23	No one other than Robert Held supervises Robyn Held at WSN.	Robert Held Depo., 24:1-3
12			
13	24	The Diabetic Pack and the Insulin Resistance Pack have always contained identical ingredients.	Robert Held Depo., 25:3-9, 26:8-12, 26:19-22
14	25	The WSN Diabetic Pack product currently consists of the: 1) Glucose Support Formula & 2) Life Support Formula.	Robert Held Depo., 26:1-4
15			
16	26	Robert Held, Robyn Held, and Dave Stanbridge decided to sell the Diabetic Pack at WSN.	Robert Held Depo., 26:13-18
17	27	Robert Held, Robyn Held, and Dave Stanbridge are the persons at WSN who decided to sell the Insulin Resistance Pack.	Robert Held Depo., 26:13-24
18			
19	28	Consumers may purchase Defendants' products on the website www.realfoodnutrients.com.	Robert Held Depo., 28:14-19
20	29	Robert Held researched scientific studies on the Internet to inform his decision in formulating the WSN Diabetic Pack.	Robert Held Depo., 37:12-17
21			
22	30	Robert Held researched studies of individual ingredients when formulating the Diabetic Pack.	Robert Held Depo., 39:17-22
23	31	There are no studies on the Diabetic Pack, only on its ingredients.	Robert Held Depo., 46:3-8
24	32	The only difference between the WSN Diabetic Pack and the WSN Glucose Support Formula is the Glucose Support Formula does not contain the WSN Vitamin and Mineral Formula.	Robert Held Depo., 46:24-47:7
25			
26	33	Robert Held decided to sell the Glucose Support Formula as a standalone product.	Robert Held Depo., 46:24-47:9-10
27			
28	34	Defendants send out emails to provide information on existing products and sell WSN products to the current and potential customers.	Robert Held Depo., 47:14-48:1

1	35	Robyn Held reviews the WSN emails before those emails are sent out to the public.	Robert Held Depo., 48:2-13
2	36	Robert Held wrote emails for WSN to send out to the public.	Robert Held Depo., 48:20-23
3	37	The WSN website describes a clinical study claiming that consuming banaba leaf extract resulted in a 31.9 percent drop in average blood sugar level.	Robert Held Depo., 59:11-60:6, Exh. 3
4	38	The ingredients in the WSN Glucose Support Formula affect different people differently based on a variety of factors beyond the Defendants' control including exercise, diet, and body makeup.	Robert Held Depo., 61:7-11
5	39	Robert Held does not know how many people received a benefit from the WSN Diabetic Pack without exercise.	Robert Held Depo., 65:10-20
6	40	Robert Held claims that WSN would not advise people who use the WSN Diabetic Pack to stop taking their diabetes medications.	Robert Held Depo., 70:16-18
7	41	Robert Held states that the testimonial of Tiffany Lipton on the WSN website is not typical of the experience of users Defendants' products because Tiffany Lipton is a Type 1 diabetic.	Robert Held Depo., 76:19-77:16
8	42	Robert Held states that he read testimonials from half a dozen or more Type 1 diabetics who had a great deal of success using Defendants' products.	Robert Held Depo., 77:17-78:5
9	43	Defendants keep track of some of the success stories they receive from users of Defendants' products.	Robert Held Depo., 78:6-11
10	44	THIS NUMBER INTENTIONALLY NOT USED	-----
11	45	THIS NUMBER INTENTIONALLY NOT USED	-----
12	46	THIS NUMBER INTENTIONALLY NOT USED	-----
13	47	Defendants claim that the WSN Diabetic Pack assists in the dietary or nutritional management of diabetes by providing nutrients which typical diabetics lack.	Robert Held Depo., 107:22-108:8, Exh. 8
14	48	Robert Held wrote "Reversing Health Challenges, Newsletter of the Wellness Support Network, Issue 13."	Robert Held Depo., 108:25-109:16, Exh. 13
15	49	WSN Newsletter Issue 13 was distributed on the WSN website and was also emailed to WSN customers and prospective WSN customers.	Robert Held Depo., 109:10-21
16	50	THIS NUMBER INTENTIONALLY NOT USED	-----

1		Robert Held wrote a letter to WSN customers who purchased the Diabetic Pack that stated "It will normally take anywhere from 30 to 90 days to see a significant and stable reduction in your blood sugar levels."	Robert Held Depo., 133:19-134:6, Exh. 20
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4	52	The WSN website stated "Nobel Prize Winning Technology Validates WSN Diabetic Pack Ingredients."	Robert Held Depo., 136:14-137:3, Exh. 21
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6	53	Robert Held wrote most of the web page titled "Causes of Diabetes" on the WSN website.	Robert Held Depo., 140:20-141:5, Exh. 22
7	54	THIS NUMBER INTENTIONALLY NOT USED	-----
8	55	THIS NUMBER INTENTIONALLY NOT USED	-----
9	56	Defendants changed the Diabetic Pack to the Glucose Support Formula by separately selling the Life Support Formula, which consisted of the vitamin-mineral component and the calcium-magnesium component, from the Glucose Support Formula product.	Robert Held Depo., 157:12-19
10			
11	57	Robert Held wrote "Newsletter 15," which was emailed to WSN customers.	Robert Held Depo., 183:5-19, Exh. 27
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13	58	Glucose Support Formula is one component of the WSN Diabetic Pack.	Robert Held Depo., 198:8-14
14	59	Glucose Support Formula was also one component of the WSN Insulin Resistance Pack.	Robert Held Depo., 200:9-16
15	60	The formulation of Glucose Support Formula was the same in the WSN Diabetic Pack as in the Insulin Resistance Pack over time.	Robert Held Depo., 200:17-20
16			
17	61	Robert Held alone decided to change the formulation of the Glucose Support formula over time.	Robert Held Depo, 200:21-25
18	62	Robert Held came up with each formulation of the Glucose Support Formula over time.	Robert Held Depo., 201:1-3
19			
20	63	Robyn Held is the Chief Financial Officer and Chief Operating Officer of Wellness Support Network.	Robyn Held Depo., 8:9-13
21	64	Robyn Held has worked at Wellness Support Network since 2002.	Robyn Held Depo., 10:1-3
22	65	Robyn Held has been in charge of designing and editing the WSN website since at least 2003.	Robyn Held Depo., 12:16-21
23	66	Robyn Held supervises all of the WSN employees.	Robyn Held Depo., 18:6-19:1; 26:10-14
24	67	Defendants have sold and continues to sell the Diabetic Pack.	Robyn Held Depo., 27:10-28:8
25	68	Defendants have sold the Insulin Resistance Pack.	Robyn Held Depo., 27:10-28:8; 40:5-20
26			
27	69	As of February 21, 2013, Defendants no longer sell the Insulin Resistance Pack.	Robyn Held Depo., 71:23-25
28			

1	70	The majority of Defendants' customers find WSN through the Internet.	Robyn Held Depo., 30:5-16
2	71	Defendants sell their product via Amazon.	Robyn Held Depo., 32:17-33:9
3	72	REKO is the fulfillment warehouse for WSN.	Robyn Held Depo., 23:7-13
4	73	REKO handles all of the payment processing for WSN.	Robyn Held Depo., 36:2-37:10;
5	74	REKO handles all of the fulfillment processing for WSN.	Robyn Held Depo., 35:17-23; 37:23-38:1; 39:7-11
6	75	Sometime between 2003 and 2004, Defendants began selling the Diabetic Pack as a private label product under the banner of WSN Diabetic Pack.	Robyn Held Depo., 43:25-44:15
7			
8	76	All of the ingredients that were in the Glucose Support Formula when Defendants began selling the Diabetic Pack are still in the Glucose Support Formula that Defendants sell as of February 21, 2013.	Robyn Held Depo., 46:18-47:9
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11	77	The ingredients of the Glucose Support Formula, both the quantities and the specific ingredients, have changed multiple times between when the Diabetic Pack became a private label product and February 21, 2013.	Robyn Held Depo., 48:24 - 50:21
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13			
14	78	The ingredients of the Vitamin and Mineral Formula, both the quantities and the specific ingredients, did not change between when Diabetic Pack became a private label product and when Defendants stopped selling it.	Robyn Held Depo., 56:4-19
15			
16			
17	79	The Vitamin and Mineral Formula and the Calcium Magnesium Formula were combined to create a new product called the Life Support Formula with exactly the same ingredients, both the quantities and the specific ingredients.	Robyn Held Depo., 57:2-14
18			
19	80	THIS NUMBER INTENTIONALLY NOT USED	-----
20	81	Intercell Nutrition, Inc., is the maker of the products that comprise the WSN Diabetic Pack.	Robyn Held Depo., 77:20-225
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22	82	According to a document provided by Defendants, associates of Intercell Nutrition, Inc. may disseminate existing studies performed on Foodform vitamins and minerals if they are accompanied by a disclaimer which states the following: "These studies may not conform to peer review standards; therefore, the results are not conclusive."	Robyn Held Depo., Ex. 15; 78:21-80:7
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1		Robyn Held states that beginning in 2009, Defendants disseminated existing studies performed on Foodform vitamins and minerals that are required to be and were accompanied by a disclaimer which states the following: "These studies may not conform to peer review standards; therefore, the results are not conclusive."	Robyn Held Depo., 80:1-7
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5	84	THIS NUMBER INTENTIONALLY NOT USED	-----
6	85	Defendants' promotional materials included the following content: "New diabetes breakthrough, clinically proven natural solution to diabetes with a 90 percent success rate."	Robyn Held Depo., 122:3-14
7			
8	86	Robert Held wrote all of WSN's newsletters.	Robyn Held Depo., 207:14-15; 211:23-24; 215:20-24; 218:14-15; 224:5-8; 226:13-18
9			
10	87	Robyn Held posted all of WSN's newsletters to the Internet.	Robyn Held Depo., 207:16-18; 211:25-212:1; 215:25-216:1; 218:16-17; 224:9-10; 226:19-20
11			
12			
13	88	Email blasts are promotional emails and newsletters that Defendants send out to existing and potential customers.	Robyn Held Depo., 234:23-235:4
14	89	Defendants track the success of their PPC (pay-per-click) campaigns.	Robyn Held Depo., 310:20-22; 311:22-312:16
15			
16	90	Defendants received a Warning Letter from the U.S. Food and Drug Administration (FDA) on or around September 27, 2005.	WSN CID Response, November 13, 2007, p. 44
17	91	From 2004 to November 13, 2007, Defendants received approximately 384 consumer complaints regarding the WSN Diabetic Pack.	WSN CID Response, November 13, 2007, p. 47; Defendants' RFP Response #21
18			
19	92	The consumer complaints Defendants received mainly fall into one of two categories: Either the Diabetic Pack was not working to the customer's expectations, or the customer's doctor did not support the customer's use of the Diabetic Pack.	WSN CID Response, November 13, 2007, pp. 47-48; Defendants' RFP Response #21
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22	93	Since at least 2004, and continuing until at least June 14, 2010, Defendants advertised a product called the WSN Diabetic Pack to consumers throughout the United States.	Defendants' RFA response #4
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24	94	Since at least 2004, and continuing until at least June 14, 2010, Defendants sold a product called the WSN Diabetic Pack to consumers throughout the United States.	Defendants' RFA response #5
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1	95	Until 2011, the Diabetic Pack product consisted of the: 1) Glucose Support Formula; 2) Calcium-Magnesium Formula; and 3) Vitamin & Mineral Formula.	Defendants' RFA response #6; Robyn Held Depo., 55:1-5
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3	96	The recommended dosage of the Glucose Support Formula is three capsules daily.	Defendants' RFA responses #8 & #134
4	97	The recommended dosage of the Calcium-Magnesium Formula was one tablet per day.	Defendants' RFA responses #10 & #135
5	98	The recommended dosage of the Vitamin & Mineral Formula was one tablet per day.	Defendants' RFA responses #12 & #136
6			
7	99	Since at least 2004, and continuing until at least June 14, 2010, Defendants advertised a product called the WSN Insulin Resistance Pack to consumers throughout the United States.	Defendants' RFA response #130
8			
9	100	Since at least 2004, and continuing until at least June 14, 2010, Defendants sold a product called the WSN Insulin Resistance Pack to consumers throughout the United States.	Defendants' RFA response #131
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11	101	When the Insulin Resistance Park product was for sale it consisted of the: 1) Glucose Support Formula; 2) Calcium-Magnesium Formula; and 3) Vitamin & Mineral Formula.	Defendants' RFA response #133
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13	102	Defendants' marketing and advertising for the Diabetic Pack was primarily through PPC (pay-per-click) marketing campaigns.	WSN's interrogatory response #3
14	103	Defendants' marketing and advertising for the Insulin Resistance Pack was primarily through PPC (pay-per-click) marketing campaigns.	WSN's interrogatory response #3
15			
16	104	THIS NUMBER INTENTIONALLY NOT USED	-----
17	105	Defendants hired Telic Ionic to do paid search engine advertising and search engine optimization for WSN from 2007 to 2011.	Huffman Depo., 19:12-20:25
18			
19	106	Telic Ionic placed a search engine result advertisement for the WSN Diabetic Pack which read "Can't lower blood sugar? Clinically proven drug-free solution that lowers blood sugar."	Huffman Depo., 60:17-61:13, Exh. 53
20			
21	107	Deborah Gilleard and her husband Keith Gilleard own and are officers of Gilleard Marketing.	Gilleard Depo., 13:6-15:21
22	108	Defendants retained Gilleard Marketing in September 2009 to analyze WSN's then-current "pay-per-click" marketing program.	Gilleard Depo., 47:17-22, 70:6-71:25
23			
24	109	Defendants hired Gilleard Marketing in January 2010 to run WSN's pay-per-click marketing program and provided services to WSN from then until February 2012, then again from July 2012 to December 2012.	Gilleard Depo., 47:17-48-8
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1		The following text appears on Defendants' 2009 Website: "This product is a medical food for the	Plaintiff's RFA Response
2		dietary management of diabetes. To be used under	#130
3	110	medical supervision as part of your on-going	
4		medical treatment. This product is not intended for	
5		use by children under the age of twelve or by	
6		pregnant or lactating women in the treatment or	
7		management of diabetes." See [Dkt. # 27-2] at p. 4	
8		of 4 (Ex. A p. 6).	
9	111	The following text appears in a colored box which	Plaintiff's RFA Response #
10		is of a different color than the white background of	132, 133
11		the Defendants' 2009 Website: "This product is a	
12		medical food for the dietary management of	
13		diabetes. To be used under medical supervision as	
14		part of your on-going medical treatment. This	
15		product is not intended for use by children under	
16		the age of twelve or by pregnant or lactating	
17		women in the treatment or management of	
18		diabetes." These sentences are the only text which	
19		appears in the colored box. See [Dkt. # 27-2] at p.	
20		4 of 4 (Ex. A p. 6).	
21	112	The page on which customers of WSN placed their	Plaintiff's RFA Response #
22		orders for the Diabetic Pack is a separate page of	134
23		the Defendants' 2009 Website and is not depicted	
24		in Exhibit A of the First Amended Complaint.	
25	113	An arrow pointing down appears between two	Plaintiff's RFA Response #
26		blocks of text on the right-side of the portion of	135
27		the Defendants' 2009 website as portrayed in [Dkt	
28		# 27-1] at p. 2 of 3 (Ex. A p. 1).	
29	114	The following text appears on the Defendants'	Plaintiff's RFA Response
30		2009 Website: "The Food and Drug	#139
31		Administration has not evaluated these claims	
32		pertaining to these medical foods. These medical	
33		foods are intended for the dietary management of	
34		diabetes and not intended to 'diagnose, treat, cure	
35		or prevent any disease,' because only a drug can	
36		legally make such a claim." See [Dkt # 27-3] at p.	
37		1 of 5 (Ex. A p. 7).	

1		The following text appears in a colored box which is of a different color than the white background of the Defendants' 2009 Website: "The Food and Drug Administration has not evaluated these claims pertaining to these medical foods. These medical foods are intended for the dietary management of diabetes and not intended to 'diagnose, treat, cure or prevent any disease,' because only a drug can legally make such a claim." This text is the only text which appears in the colored box. See [Dkt. # 27-3] at p. 1 of 5 (Ex. A p. 7).	Plaintiff's RFA Response #141, 142
2	115		
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8		The following text appears on the Defendants' 2010 Website: "This product is a medical food for the dietary management of diabetes. To be used under medical supervision as part of your on-going medical treatment. This product is not intended for use by children under the age of twelve or by pregnant or lactating women in the treatment or management of diabetes." See [Dkt. # 27-4] at p. 4 of 4 (Ex. B p. 7).	Plaintiff's RFA Response # 143
9	116		
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12			
13		The following text appears in a colored box which is of a different color than the white background of the Defendants' 2010 Website: "This product is a medical food for the dietary management of diabetes. To be used under medical supervision as part of your on-going medical treatment. This product is not intended for use by children under the age of twelve or by pregnant or lactating women in the treatment or management of diabetes." This text is the only text which appears in the colored box. See [Dkt. # 27-4] at p. 4 of 4 (Ex. B p. 7).	Plaintiff's RFA Response # 145, 146
14	117		
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20		The page on which customers of WSN placed their orders for the Diabetic Pack is a separate page of the Defendants' 2010 Website and is not depicted in Exhibit B of the First Amended Complaint.	Plaintiff's RFA Response # 147
21	118		
22		An arrow pointing down appears between two blocks of text on the right-side of the portion of the Defendants' 2010 website as portrayed in [Dkt. 27-3] at p. 3 of 5 (Ex. B p. 1).	Plaintiff's RFA Response # 148
23	119		
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1		The following text appears on the Defendants' 2010 Website: "The Food and Drug Administration has not evaluated these claims pertaining to these medical foods. These medical foods are intended for the dietary management of diabetes and not intended to 'diagnose, treat, cure or prevent any disease,' because only a drug can legally make such a claim." See [Dkt. #27-5] at p. 1 of 4 (Ex. B p. 8).	Plaintiff's RFA Response #152
2	120		
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6		The following text appears in a colored box which is of a different color than the white background of the Defendants' 2010 Website: "The Food and Drug Administration has not evaluated these claims pertaining to these medical foods. These medical foods are intended for the dietary management of diabetes and not intended to 'diagnose, treat, cure or prevent any disease,' because only a drug can legally make such a claim." This text is the only text which appears in the colored box. See [Dkt. #27-5] at p. 1 of 4 (Ex. B p. 8).	Plaintiff's RFA Response # 154, 155
7	121		
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13		The following text appears in Defendants' 2010 Website in regards to Defendants' Insulin Resistance Pack: "The WSN® Insulin Resistance Pack is a medical food for the dietary management of insulin resistance. To be used under medical supervision as part of your on-going medical treatment. This product is not intended for use by children under the age of twelve or by pregnant or lactating women in the treatment or management of insulin resistance." See [Dkt. #27-6] at p. 3 of 3 (Ex. C p. 5).	Plaintiff's RFA Response # 280
14	122		
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20		The following text in regards to Defendants' Insulin Resistance Pack product appears in a colored box which is of a different color than the white background of the Defendants' 2010 Website: "The WSN® Insulin Resistance Pack is a medical food for the dietary management of insulin resistance. To be used under medical supervision as part of your on-going medical treatment. This product is not intended for use by children under the age of twelve or by pregnant or lactating women in the treatment or management of insulin resistance." This text is the only text which appears in the colored box. See [Dkt. #27-6] at p. 3 of 3 (Ex. C p. 5).	Plaintiff's RFA Responses # 282, 283
21	123		
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1		The page on which customers of WSN placed their orders for the Insulin Resistance Pack is a separate	Plaintiff's RFA Response #
2	124	page of the Defendants' 2010 Website and is not	284
3		depicted in Exhibit C of the First Amended	
4		Complaint.	
5		The following text appears in Defendants' 2010	Plaintiff's RFA Response #
6		Website in regards to Defendants' Insulin	285
7	125	Resistance Pack directly below a hyperlink which	
8		directs customers to the separate order page: "The	
9		WSN® Insulin Resistance Pack is a medical food	
10		for the dietary management of insulin resistance.	
11		To be used under medical supervision as part of	
12		your on-going medical treatment. This product is	
13		not intended for use by children under the age of	
14		twelve or by pregnant or lactating women in the	
15		treatment or management of insulin resistance."	
16		See [Dkt. #27-5 through 27-7] (Ex. C).	
17		An arrow pointing down appears between two	Plaintiff's RFA Response #
18	126	blocks of text on the right-side of the portion of	286
19		the Defendants' 2010 website as portrayed in [Dkt	
20		# 27-5] at p. 3 of 4 (Ex. C p. 1).	
21		The following text appears in Defendants' 2010	Plaintiff's RFA Response #
22		Website in regards to Defendants' Insulin	290
23		Resistance Pack: "The Food and Drug	
24	127	Administration has not evaluated these claims	
25		pertaining to these medical foods. These medical	
26		foods are intended for the dietary management of	
27		insulin resistance and not intended to 'diagnose,	
28		treat, cure or prevent any disease,' because only a	
		drug can legally make such a claim." See [Dkt. #	
		27-7] at p. 1 of 2 (Ex. C p. 6).	
		The following text in regards to Defendants'	Plaintiff's RFA Response #
		Insulin Resistance Pack product appears in a	292, 293
		colored box which is of a different color than the	
		white background of the Defendants' 2010	
	128	Website: "The Food and Drug Administration has	
		not evaluated these claims pertaining to these	
		medical foods. These medical foods are intended	
		for the dietary management of insulin resistance	
		and not intended to 'diagnose, treat, cure or	
		prevent any disease,' because only a drug can	
		legally make such a claim." This text is the only	
		text which appears in the colored box. See [Dkt. #	
		27-7] at p. 1 of 2 (Ex. C p. 6).	
	129	The FTC Act does not define the term "medical	Plaintiff's RFA Response #
		food."	299

1	130	The FTC was unable to provide copies of the studies Mr. Cleland referred to in his August 3, 2010 correspondence with the FDA.	Plaintiff's response to Interrogatory Ordered by Magistrate Judge Spiro on March 8, 2013
3	131	On May 20, 2010, Gregory Fortsch, FTC Senior Attorney in the Bureau of Consumer Protection, contacted Elizabeth Miller of the FDA seeking to know if any adverse event reports existed for either Defendants' Diabetic Pack or Insulin Resistance Pack products.	FTC-WSN-00028186
7	132	At the time of filing this lawsuit, no adverse event reports regarding either the Defendants' Diabetic Pack or Insulin Resistance Pack product existed within the FDA AERS Databases.	FTC-WSN-00028186
9	133	At the time of filing this lawsuit, no adverse event reports regarding either the Defendants' Diabetic Pack or Insulin Resistance Pack product existed within the FDA CAERS Databases.	FTC-WSN-00030932
12	134	Robert Held stated in his deposition that Defendants recommended that customers engage in exercise, a low carb diet, and proper nutrition in addition to using Defendants' Diabetic Pack and Insulin Resistance Pack products.	Robert Held Depo; 177:3-178:7
15	135	Robert Held testified that someone who has a diabetic condition should consult with their doctor.	Robert Held Depo 75:10-12
16	136	Robert Held testified that medical supervision of a diabetic is important.	Robert Held Depo 75:23-24
17	137	Robert Held testified that Defendants do not tell people to not follow their doctor's recommendations.	Robert Held Depo 85:3-4
19	138	Robert Held testified that Defendants tell customers "they need to get good nutrition" and "a little exercise in their life."	Robert Held Depo 84:25-85:8
21	139	Some of the studies Defendants reviewed in formulating its Diabetic Pack and Insulin Resistance Pack products are posted on the WSN website.	Robert Held Depo 45:1-4

Respectfully Submitted,

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Dated: December 3, 2013

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Dated: December 3, 2013

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